

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN  
PHARMACY

IN THE MATTER OF  
**JUSTIN H. WARD**  
PH-PT NO. 8854  
LIC. EXP. DATE: 06/18/09

DOCKET NO. PHA-2009-0034

FINAL DECISION AND ORDER BY DEFAULT

On October 25, 2007, the Board of Registration in Pharmacy ("Board") issued and duly served on Justin H. Ward, ("Respondent") an Order to Show Cause ("Show Cause Order")<sup>1</sup> related to a complaint filed regarding Respondent's registration. In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order ("Answer") was to be submitted within 21 days of receipt of the Show Cause Order<sup>2</sup>. The Show Cause Order also notified Respondent of the right to request a hearing on the allegations<sup>3</sup>, and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order.<sup>4</sup> Respondent was further notified that failure to submit an Answer within 21 days "shall result in the entry of default in the captioned matter" and, if defaulted, "the Board may enter a Final Decision and Order that assumes the truth of the allegations in the Show Cause Order and may revoke, suspend, or take other disciplinary action against Respondent's registration...including any right to renew Respondent's registration." A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

On July 20, 2009, Prosecuting Counsel sent notice to Respondent to file an Answer and a Request for Hearing by July 27, 2009. The notice again advised Respondent that if defaulted, the Board might enter a Final Decision and Order that

<sup>1</sup> Pursuant to 801 CMR 1.01(6)(a).

<sup>2</sup> In accordance with 801 CMR 1.01(6)(d)(2).

<sup>3</sup> Pursuant to M.G.L. c. 112, s. 61.

<sup>4</sup> Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

assumes the truth of the allegations stated in the Show Cause Order and impose registration discipline, including discipline on any right to renew.

As of the date of this Final Decision and Order by Default, Respondent has failed to file either an Answer or a Request for Hearing.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Show Cause Order as required by M.G.L. c. 30A, s. 10, and sufficient notice of the issues involved to afford Respondent reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, s. 11(1). The Board has also notified Respondent of the obligation under 801 CMR 1.01(6)(d) to file an Answer to the Show Cause Order within 21 days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, s. 10(2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations of the complaint against Respondent are accepted as true. *Danca Corp. v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990).

Based on the foregoing, the Board enters a default in the above-captioned matter and, consequently, the allegations in the Order to Show Cause are deemed to be true and Respondent has waived the right to be heard. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

In accordance with the Board's authority and statutory mandate, the Board orders as follows:

#### ORDER

The Board voted to issue this *Final Decision and Order by Default* and **REVOKE** the Respondent's Pharmacy technician registration on August 18, 2009 by the following vote: In favor: Stanley B. Walczyk, R.Ph.; Steven Budish, Public Member; William A.

Gouveia, R.Ph., M.S., George A. Cayer, R.Ph. and Donald D. Accetta, M.D., Michael Tocco, R.Ph., James T. DeVita, R.Ph. Recused: Joanne M. Trifone, R.Ph.  
Opposed: None. Absent: Kathy J. Fabiszewski, Ph.D., N.P., Sophia Pasedis, R.Ph., Pharm.D.

EFFECTIVE DATE OF ORDER

This Final Decision and Order by Default becomes effective upon the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default within thirty (30) days of receipt of notice of this Final Decision pursuant to G.L. c. 112, § 64.

BOARD OF REGISTRATION

IN PHARMACY

*James T. DeVita*

James. T, DeVita, R.Ph.

President

Date Issued: August 18, 2009

Attachment: Order to Show Cause delivered June 22, 2009

Notified: Respondent by First Class Mail and Certified Mail/Receipt No. 7008

3230 0002 4164 4460 to [REDACTED]

First Class to [REDACTED]

Nancy Dolberg, Board Prosecutor BY HAND

Dec. No. 2054

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

\_\_\_\_\_  
In the Matter of )  
JUSTIN H. WARD )  
Pharmacy Technician No. 8854 )  
Expired 6/18/09 )  
\_\_\_\_\_ )

Docket No. PHA-2009-0034

ORDER TO SHOW CAUSE

Justin H. Ward, you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Pharmacy ("Board") should not suspend, revoke or otherwise take action against your Massachusetts pharmacy technician registration, Registration No. 8854, or your right to renew such registration, pursuant to Massachusetts General Laws (G. L.) Chapter 112, §§ 42A and 61 and Board regulations 247 CMR 2.00 et seq. based upon the following facts and allegations:

1. On or about October 25, 2007, the Board issued you a pharmacy technician registration (No. 8854). Your registration expired on June 18, 2009 and has not been renewed.
2. While employed as a pharmacy technician at Walgreen's Pharmacy in Holyoke, Massachusetts, you diverted Vicodin, a controlled substance, on three separate occasions, for your personal use. You admitted to this conduct.
3. On or about August 14, 2007 you admitted to sufficient facts to warrant a finding of guilty in Westfield District Court Criminal Docket No. [REDACTED] charging Possession of a Class D Substance, Operating After License Suspension, and Operating After Suspended Registration.
4. Your conduct as described above warrants disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to G.L. c. 112 § 61 for deceit, malpractice, and gross misconduct in the practice of the profession, or for any offense against the laws of the Commonwealth relating thereto.
5. Your conduct as described above warrants disciplinary action by the Board against your registration to practice as a pharmacy technician for the following conduct:
  - a. Pursuant to 247 CMR 10.03(1)(a) for violating any of the duties and standards set out in Board regulations (247 CMR 2.00, et. seq.) or any rule or any written policy adopted by the Board;

- b. Pursuant to 247 CMR 10.03(1)(b) for violating any provision of M.G.L. c.112, §§24 through 42A or any provision of state or federal statutes or rules or regulations promulgated thereunder related to the practice of the profession;
  - c. Pursuant to 247 CMR 10.03(1)(e) for engaging in misconduct in the practice of the profession;
  - d. Pursuant to 247 CMR 10.03(1)(l) for engaging in conduct that has the capacity or potential to deceive or defraud;
  - e. Pursuant to 247 CMR 10.03(1)(n) for being convicted of any crime, entering a plea of guilty to any crime, entering a plea of *nolo contendere* to any crime, or admitting to sufficient facts to warrant a finding of guilty to any crime;
  - f. Pursuant to 247 CMR 10.03(1)(r) for engaging in conduct that demonstrates lack of good moral character;
  - g. Pursuant to 247 CMR 10.03(1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession;
  - h. Pursuant to 247 CMR 10.03(1)(v) for committing an act that violates recognized standards of pharmacy practice; and
  - i. Pursuant to 247 CMR 10.03(1)(x) for violation of M.G.L. c. 94C or any rules or regulations promulgated thereunder.
6. Your conduct as described above violates M.G.L. c. 94C § 37, for stealing a controlled substance from a pharmacy.
  7. Your conduct as described above also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the pharmacy profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also, *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose other discipline against your registration. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at your own expense. Pursuant to 801 CMR 1.01 (10) (i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at [your] own expense upon terms ordered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent immediately upon completion, and on an ongoing basis, directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including but not limited to, the written transcript of the hearing is a public record and subject to the provisions of G.L. c. 4, § 7 and G.L. c. 66, § 10.

Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter. Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.


If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, including any right to renew your registration.

Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Nancy Dolberg, Prosecuting Counsel, at the following address:

Nancy Dolberg, Esq.  
Prosecuting Counsel  
Department of Public Health  
Office of the General Counsel  
239 Causeway Street, 2nd Floor  
Boston, MA 02114

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 973-0880 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION  
IN PHARMACY,  
Joanne M. Trifone, R.Ph., President-Elect

By:   
Nancy A. Dolberg, Esq.  
Prosecutor  
Department of Public Health


Dated: June 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Cover Letter, Order to Show Cause and Certificate of Service, were served upon the Respondent:

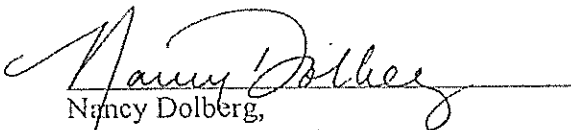
Justin H. Ward  


by First Class and Certified Mail, postage prepaid (Certified Mail No. 7008 3230 0002 4164 0066) and upon the Respondent:

Justin H. Ward  


by First Class and Certified Mail, postage prepaid (Certified Mail No. 7008 3230 0002 4164 3043),

On this the 22<sup>nd</sup> day of June, 2009.

  
Nancy Dolberg,  
Prosecuting Counsel